reversed where it announced a clearly erroneous doctrine. *Johnson* v. *Cadillac Motor Co.* (C. C. A., Second Circuit, 1919) 261 Fed. 878.

It is a generally recognized rule that the decision of a court on a prior appeal is conclusive on the same question on a subsequent appeal. *San Pedro L. A. & S. L. R. Co.* v. *Los Angeles* (Cal. 1918) 179 Pac. 390; see *Catholic Order of Foresters* v. *Collins* (Ind. App. 1919) 122 N. E. 666. To such an extent is the doctrine carried that it is the great weight of authority that a decision on a former appeal, although admittedly erroneous, is the "law of the case", *Strehlan* v. *John Schroeder Lumber Co.* (1913) 152 Wis. 589, 142 N. W. 120; *Bjorgo* v. *First Nat. Bank* (1916) 132 Minn. 273, 156 N. W. 277, and the appellate court is said to have no right to change its views expressed on a former appeal of the same case. See *James* v. *John Flannery Co.* (1915) 16 Ga. App. 639, 85 S. E. 942. Nevertheless, there is a constantly growing minority view—a modern and it is submitted a more reasonable tendency—which, while recognizing the general rule and the policy dictating it, namely the prevention of recurrent litigation over the same issue, makes an exception in a case where the former decision was palpably erroneous, *Henry* v. *Atchison etc. Ry.* (1910) 83 Kan. 104, 109 Pac. 1005; see *Gracey* v. *St. Louis* (1909) 221 Mo. 1, 119 S. W. 949, or where cogent reasons demand that it be reversed. See *Trombley* v. *Seligman* (1909) 133 App. Div. 525, 117 N. Y. Supp. 1063. But this exceptional power should be sparingly exercised, see *Cluff* v. *Day* (1894) 141 N. Y. 580, 582, 36 N. E. 182, and the mere fact of an intervening decision by the supreme court of the jurisdiction *contra* to that reached on a first appeal, does not of itself warrant a reversal on a second appeal. *Phoenix Ins. Co.* v. *Pickel* (1891) 3 Ind. App. 332, 29 N. E. 432; *Comrs. of Tipton Co. v Indianapolis etc. Ry. Co.* (1883) 89 Ind. 101; *Ogle* v. *Turpin* (1881) 8 Ill. App. 453. The conduct of the court in the instant case would seem to be an extension of a hitherto strictly limited exception to the general rule, since the doctrine of *MacPherson* v. *Buick Motor Co.* (1916) 217 N. Y. 382, 111 N. E. 1050, relied on by the court in the instant case for reversing their former decision, is by no means so firmly established as to warrant an appellate court in reversing its former decision. See dissenting opinion of Bartlett, Ch. J. in *MacPherson* v. *Buick Motor Co., supra.*

BANKS AND BANKING—DUTY OF DEPOSITOR TO VERIFY BANK STATEMENT.—The defendant bank without negligence cashed checks drawn by the plaintiff, but which had been fraudulently raised by the plaintiff's bookkeeper. The bank book was balanced and vouchers returned monthly, but it was not until nine months later that the bank was notified of the overpayments. An order dismissing the complaint was affirmed on appeal. *Hammerschlag Mfg. Co.* v. *Importers & Traders Nat'l. Bank* (C. C. A., 2nd Circuit, 1919) 262 Fed. 266.

The relation between bank and depositor being that of debtor and creditor, the bank can justify a payment on the depositors' account only upon actual authority, and the bank is liable for the payment of forged or altered checks, even if it has in nowise neglected to use due care to prevent the fraud. See *Critten* v. *Chemical Nat'l. Bank* (1902) 171 N. Y. 219, 224, 63 N. E. 696; *California Vegetable Union* v. *Crockler Nat'l. Bank* (1918) 37 Cal. App. 743, 174 Pac. 920. However, if the drawer has contributed to or facilitated the fraudulent alterations, as by leaving blanks in the checks unfilled, his own negligence is the proximate cause of the overpayment and he cannot recover. *Her-*

man v. *Rohan* (1918) 37 Cal. App. 678, 178 Pac. 349; *Trust Co. of America* v. *Conklin* (1909) 65 Misc. 1,119 N. Y. Supp. 367. Although the depositor is under a duty to verify returned vouchers, the bank cannot avail itself of the depositor's failure to discharge this duty, if the overpayment were due to its own negligence. *New York Produce Exchange Bank* v. *Houston* (C. C. A. 1909) 169 Fed. 785. But if the bank has used due care, it may be relieved from liability, where the depositor neglects to check over the vouchers, and the bank is misled to its prejudice. *Morgan* v. *United States Mortgage etc. Co.* (1913) 208 N. Y. 219, 101 N. E. 871; *Leather Mfg. Bank* v. *Morgan* (1886) 117 U. S. 96, 6 Sup. Ct. 657. This is especially true where the bank requires its depositors to notify them of any discrepancies. *California Vegetable Union* v. *Crockler Nat'l. Bank, supra.* In the instant case insofar as the bank was led to continue cashing the altered checks, or had lost an opportunity to secure restitution, it would seem the bank should be relieved of its liability. *Cf. Critten* v. *Chemical Nat'l. Bank, supra;* 2 Columbia Law Rev. 490.

CONTEMPT—FAILURE TO OBEY COURT ORDER ON ADVICE OF COUNSEL.—On the advice of his attorney that an order staying supplemental proceedings would be obtained from the bankruptcy court before the date set for examination, the defendant debtor failed to appear therefor. Through delay the order was not signed until such date. *Held,* the defendant is not guilty of wilful contempt of court. *Goldberg* v. *Zimet* (App. Div., 1st Dept., 1920) 180 N. Y. Supp. 273.

This is a civil and not a criminal contempt in that it is merely a failure "to do something which the contemner is ordered by the court to do for the benefit or advantage of another party to the proceedings before the court". Rapalje, Contempt § 21; see *Ex parte Dickens* (1909) 162 Ala. 272, 276, 50 So. 218; *Gordon* v. *Commonwealth* (1911) 141 Ky. 461, 133 S. W. 206. The question of offense to the dignity of the court is of but minor importance in a case of this sort. See *Witmer* v. *Polk County Dist. Ct.* (1912) 155 Iowa 244, 251, 136 N. W. 113. The defendant was undoubtedly in contempt, punishment for which would have given him little cause for complaint. The court's order was disobeyed and the defendant most certainly intended to disobey it, within the legal meaning of "intent". *Cf. Ellis* v. *United States* (1906) 206 U. S. 246, 257, 27 Sup. Ct. 600. The only question at issue is whether the advice of counsel is sufficient excuse to relieve the defendant. It has been held that where the defendant acts in good faith, advice of counsel may mitigate the damages. *State* v. *Harper's Ferry Bridge Co.* (1879) 16 W. Va. 864; see *Carr* v. *District Court* (1910) 147 Ia. 663, 674, 126 N. W. 791. But, as a general rule, courts have refused to treat this as a complete defense. *State* v. *Harper's Ferry Bridge Co., supra; Stolts* v. *Tuska* (1903) 82 App. Div. 81, 81 N. Y. Supp. 638; *West Jersey Traction Co.* v. *Camden* (1895) 58 N. J. L. 536, 37 Atl. 578; *contra, In re Zeigler* (1911) 189 Fed. 259. The court in the instant case was influenced by the fact that the plaintiff was not damaged by the defendant's failure to appear, since, because of the bankruptcy proceedings, such examination would have been presumptively useless. But since the court had ordered him to appear, and the plaintiff had the right to insist upon his appearance, the plaintiff should at least have been spared court costs.